# SUPREME COURT OF THE UNITED STATES.

No. [illegible]

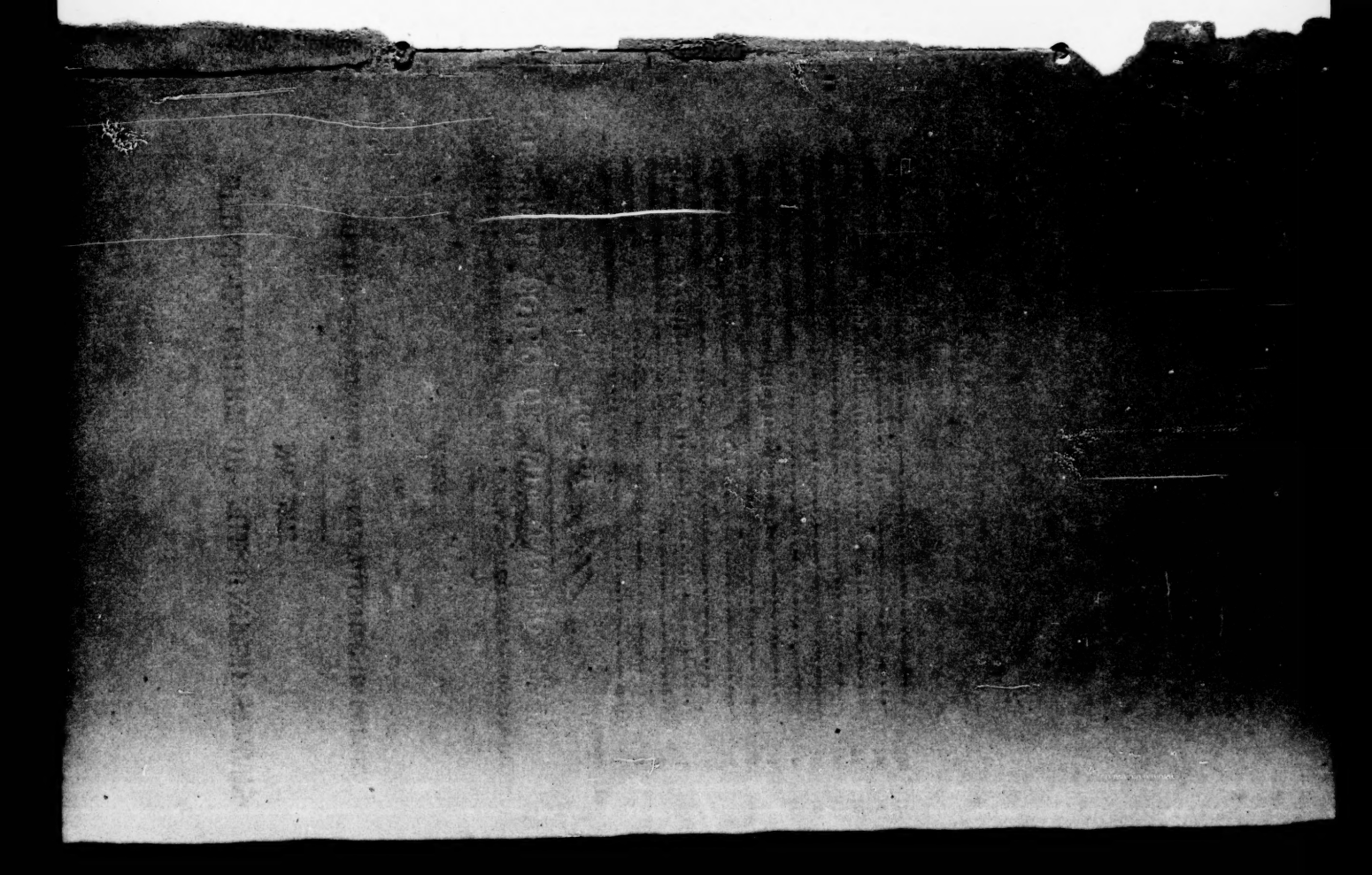
THE TOWN OF MINERAL POINT, PLAINTIFF IN ERROR,

vs.

JAMES LEE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

GOVERNMENT PRINTING OFFICE.



# SUPREME COURT OF THE UNITED STATES

## No. 257.

THE TOWN OF MINERAL POINT, PLAINTIFF IN ERROR,

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*a* UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the eighty-ninth.

Fees $13 05.

[SEAL.] A. SCOTT SLOAN, *Clerk.*

1 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America, for the ninth circuit and district of Wisconsin, begun and held according to law on the second Monday of September, A. D. 1864, at the city of Milwaukee, in said district of Wisconsin—present and presiding Hon. Samuel F. Miller, associate justice of the Supreme Court of the United States, assigned to said circuit, and the Hon. Andrew G. Miller, district judge—on the thirteenth day of the term, to wit, on the twenty-sixth day of September, A. D. 1864, the following proceedings were had, to wit:

JAMES LEE
*vs.*
THE TOWN OF MINERAL POINT.

Be it remembered, that heretofore, to wit, on the twenty-fifth day of November, A. D. 1861, the above-named plaintiff, by his attorneys, Messrs. Carpenter & Gridley, filed in the office of the clerk of the district court of the United States for the district of Wisconsin his præcipe for a summons in a plea of debt, damages two thousand dollars, in the words and figures following, to wit:

District court of the United States of America for the district of Wisconsin.

JAMES LEE
*vs.*
THE TOWN OF MINERAL POINT.

Issue a summons in the above-entitled cause, in a plea of debt, to the plaintiff's damage two thousand dollars, returnable the first Monday of December next ensuing.

CARPENTER & GRIDLEY, *Plaintiff's Attorneys.*

To J. M. MILLER, Esq., *Clerk.*

Whereupon a summons issued in the words and figures following, to wit:

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

You are hereby commanded to summon the town of Mineral Point to appear before the district court of the United States of America for the district of Wisconsin aforesaid, at Milwaukee, on the first Monday of December ensuing, then and there to answer unto James Lee, in a plea of debt, to his

damage two thousand dollars, which shall then and there be made to appear, and of this writ make due return.

Witness the Hon. Andrew G. Miller, judge of the said district court of the United States, at the city of Milwaukee, in the said district, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States the eighty-sixth.

J. M. MILLER, *Clerk.*

3 CARPENTER & GRIDLEY, *Attorneys.*

And afterwards, on the second day of December, A. D. 1861, came the marshal and made return of the summons herein, endorsed thereon as follows, to wit:

"Served on the within-named the town of Mineral Point, by showing Henry Kendall, clerk of said town, this summons, and delivering to him a copy thereof, this 29th day of November, 1861.

Fees $11 74.

D. C. JACKSON, *Marshall,*
By A. C. JACKSON, *Deputy.*

And afterwards, on the 19th day of December, 1861, came the plaintiff, by his attorneys, and filed his declaration in the words and figures following, to wit:

4 District court of the United States for the district of Wisconsin.

JAMES LEE
*vs.*
THE TOWN OF MINERAL POINT.

DISTRICT OF WISCONSIN, *ss:*

James Lee, who is a citizen of the State of New York, plaintiff in this suit, by Carpenter & Gridley, his attorneys, complains of the town of Mineral Point, a citizen of the State of Wisconsin, and a corporation created by and existing under and by virtue of the laws of the State of Wisconsin, defendant in this suit, of a plea that it render to the said plaintiff the sum of four thousand dollars, which it owes to and unjustly detains from the said plaintiff—

For that whereas, by an act of the legislature of the State of Wisconsin, approved March 23, 1853, entitled "An act to authorize the counties and towns through which the Mineral Point railroad passes to aid in its construction," it was, among other things, provided that it should be lawful for any county through any portion of which any part of the Mineral Point railroad should run, or any town or incorporated city or village in such county, to issue and deliver to said Mineral Point Railroad Company its bonds, payable to such person or persons, trustees or corporation, or to said company, at such time, for such sum or sums, at such rate of interest, transferrable by general or special indorsement or by delivery, and in such manner as might be agreed upon by and between the directors of said railroad company, and the proper officers of such county, town, incorporated city or village, as in said act thereinafter provided; and to receive in exchange for such bonds the stock or bonds of said railroad company in such manner as should be agreed upon by and between the directors of said railroad company and the proper officers of said county, town, incorporated city or village, as thereafter in said act provided; but that no such bonds should be issued or delivered to said company by any such county, town, incorporated city or village, unless a majority of the legal voters of such county, town, incorporated city or village, voting on the question should first have voted in favor of such issue in the manner thereinafter prescribed; that it should be lawful for

the Mineral Point Railroad Company to issue its bonds payable to the treasurer of the State of Wisconsin, and his successors in office, or to bearer, in the sum of one thousand dollars each, which should not exceed in the aggregate ten thousand dollars per mile of the whole of the surveyed line of the said railroad, and bearing an interest not exceeding the rate of ten per centum per annum, payable at such place and at such time, not exceeding twenty years from their date, as said company shall elect, with a provision making them transferrable by general or special indorsement or by delivery; and all such bonds which shall be delivered to any such county, town, incorporated city or village, in exchange as aforesaid, shall contain a stipulation guaranteeing the payment of principal and interest which should become due and payable on bonds of said county, town, incorporated city or village, received in exchange therefor by said company, and to secure the payment of such bonds and interest it should also be lawful for the said company to execute and deliver to the treasurer of said State, and his successors in office, in trust, for the use and benefit of the holders of any and all of said bonds, a deed of conveyance, to be called a second mortgage, of all the present and thereafter to be acquired property of said company in the whole of said railroad, including the right of way and land occupied by said road, together with the superstructure and tracks thereon, and all rails and other materials used thereon, bridges, viaducts, culverts, fences, equipments, depot grounds and buildings thereon, engines, tenders, cars, tools, materials, machinery, fixtures, and all other personal property, which said second mortgage should be taken, deemed, and held to be subject and subsidiary to another deed of conveyance, to be called a first mortgage, of all the aforesaid property, which said first mortgage, whether it should have been executed prior or subsequent to said second mortgage in point of time, should constitute the first lien upon said railroad and all the aforesaid property; but that said first mortgage should not be issued to secure the payment of bonds to a greater amount than ten thousand dollars per mile of the whole length of said road, nor bearing a rate of interest greater than at the rate of ten per centum per annum.

And that whenever said second mortgage should be delivered to the treasurer of said State, and recorded in the office of the secretary of state of said State, it should constitute a perfect and indefeasable lien upon said railroad, and upon all the property described in it, subject only to the prior lien created by said first mortgage; that whenever the said railroad company should desire to exchange any amount of its stock or bonds for the bonds of any such county, town, incorporated city or village, it should make and deliver to the clerk of the board of supervisors of such county, the town clerk, or clerk of such incorporated city or village, a definite proposition in writing, signed by the president and secretary of said railroad company, and sealed with the common seal of said company, which proposition should contain a distinct statement of the amount of the stock or of the bonds of said company which said company should propose to issue to such county, town, incorporated city or village, the time when such bonds should be payable, the amount for which they should respectively be issued, and the rate of interest which they should bear, and of the amount of the bonds of such county, town, incorporated city or village, which said company should propose to receive in exchange for its stock or bonds as aforesaid, specifying the person or persons, trustee or corporation, to whom they should be payable, the mode of transfer, the amount of each bond and the aggregate amount, the rate of interest and the time of payment; and that upon receiving such proposition the clerks of the board of supervisors of such county, the town clerk, or clerk of such incorporated city or village, should immediately call a meeting of the board of supervisors of such county, town, incorporated city or village,

to take into consideration such proposition, and that if deemed expedient, the said board should publish, or cause to be published, a notice of an election to be held by the legal voters of such county, town, incorporated city or village, at the usual place or places of holding elections in such county, town, incorporated city or village, and at such time as he might designate, which should not be less than twenty nor more than thirty days from the date of such notice; and that said notice should contain a full statement of the proposition made by said railroad company, with reference to the exchange of its stock or bonds for the bonds of such county, town, incorporated city or village, and should call upon the voters to deposit a ballot, upon which should be written or printed "for the railroad proposition," or "against the railroad proposition," or other words tantamount thereto; that such election should be held and conducted in the same manner as other general elections in such counties, towns, incorporated cities or villages, were by law required to be held and conducted, and the votes cast at such election should be counted, canvassed, and returned in the manner as the votes at any such general election; and that the canvassers should make, certify, sign, and deposit with the clerk of such county, town, incorporated city or village, a statement of the whole number of votes cast upon the question, as well as a statement of the number for the railroad proposition and of the number against the railroad proposition, and that such certificate should be conclusive evidence of the fact as to the number of votes for or against such proposition, and also of the fact that such election was regularly held and conducted according to law; that if a majority of the legal voters who should vote on the question at any election to be held in any such county, town, incorporated city or village, in pursuance of the provisions of said act, should, as indicated by the official returns of any such election, vote for the railroad proposition, it should be the duty of the proper officers of every such county, town, incorporated city or village, upon receiving from the directors of said railroad company stocks or bonds in conformity with the proposition of said railroad company to issue and deliver to the directors of said railroad company the bonds of such county, town, incorporated city or village, in conformity with said proposition; and for the purpose of giving effect to the provisions of said act, the proper officers of every county, town, incorporated city or village, mentioned in said act were in said act declared to be the chairman of the county board of supervisors and the clerk of the board of supervisors in each county, the chairman of the board of supervisors and the town clerk in each town, the mayor and city clerk of each incorporated city, and the president and clerk of each incorporated village, and that all bonds issued by any of the said counties, incorporated cities or villages, should be signed by the proper officers as aforesaid of the said county, cities, or villages, under their corporate seals respectively, and all bonds issued by any such town shall be signed by the proper officers of such town, and have annexed to them the official certificate of the clerk of the county board of supervisors, under his official seal, that they are such officers, and that their signatures are genuine, and that every county, town, incorporated city or village, by the provisions of said act authorized to issue any bonds, should be severally liable in law, faithfully, promptly, and at maturity, to pay and discharge the principal and interest due upon every such bond, and the separate faith of every such county, town, incorporated city or village, should, by the issue of said bonds, be irrevocably inviolably pledged for the prompt discharge of every such liability.

That afterwards, to wit, on or about the 1st day of October, 1855, the said railroad company made and delivered to the town clerk of the town of Mineral Point, in said county of Iowa, through a part of which county the said Mineral Point railroad ran, a definite proposition in writing, signed by

its president and the secretary of said railroad company, and sealed with the common seal of said company, which said proposition was in all respects in conformity with the provisions of said act, wherein said railroad company proposed that the proper officers of the town of Mineral Point, in said county of Iowa, should make, execute, and deliver to the said railroad company, the bonds of said town to the amount of sixty thousand dollars, in sums of five hundred dollars each, payable to the treasurer of said railroad company and his successors in office, transferable by general or special endorsement, or by delivery, bearing interest at the rate of eight per cent. per annum, payable semi-annually on the 1st day of April and October in each year, at the Manhattan Bank, in the city of New York, with coupons attached, with the principal payable on the 1st day of October, A. D. 1870; the said company therein also proposed to make, execute, and deliver to said town of Mineral Point, in exchange for the aforesaid bonds of said town, the second mortgage convertible bonds of the said company, at the option of the said town, at any time before maturity, to the amount of sixty thousand dollars, in sums of one thousand dollars each, issued in conformity with the provisions of the said act, which bonds should be payable to the treasurer of the said State and his successors in office, or to bearer, be transferable by general or special endorsement or by delivery, and should be part of an issue of bonds which should not exceed in the aggregate ten thousand dollars per mile of the whole of the surveyed line of the said railroad, and bearing interest at the rate of eight per cent. per annum, payable semi-annually on the first days of July and January in each year, at the Manhattan Bank, in the city of New York, with the principal payable on the 1st day of July, A. D. 1863, containing a stipulation guaranteeing the payment of the principal and interest which should become due and payable on any bonds of said town of Mineral Point which might be received by the said company in exchange for the bonds of said company, and that the payment of any such sums of principal or interest, or any of the bonds of said town, should operate as a release and discharge of the said company from the payment of the same amount of the principal or interest of the bonds so issued by said company; and to secure the payment of such second mortgage bonds and interest the said company proposed therein to execute and deliver, in conformity with the provisions of said act, to the treasurer of said State and his successors in office, in trust, for the use and benefit of the holders of any and all of said bonds, a deed of conveyance, to be called a second mortgage of all the present and thereafter to be acquired property of said company in the whole of said railroad, including the right of way and land occupied by said railroad, together with the superstructure and tracks thereon, bridges, viaducts, culverts, fences, equipments, depot grounds and buildings thereon, engines, tenders, cars, tools, materials, machinery, fixtures, and all other property, which second mortgage should be taken, deemed, and held as in said act provided.

That the above proposition was received by W. H. Curry, town clerk of the town of Mineral Point, who immediately thereafter called a meeting of the board of supervisors of said town, to take into consideration the said proposition, when, it being by said board of supervisors of said town deemed expedient, the said board caused to be published a notice of an election to be held by the legal voters of said town, at the usual places of holding elections in said town, and that in pursuance of said notice, said election was in all things held and conducted in the manner by said act provided, and that the votes cast at said election were counted, canvassed, and returned in the manner by said act provided; and that the canvassers at such election did, as such canvassers, make, certify, sign, and deposite as required by said act, a statement of the whole number of votes cast upon the question aforesaid,

as well as a statement of the number of votes "for the railroad proposition," and of the number of votes "against the railroad proposition;" that a majority of the legal voters who voted on said question at said election, held in said town pursuant to said act, did, as indicated by the official returns of such election, vote "for the railroad proposition;" and it then and there became and was the duty of the said chairman of the board of supervisors and town clerk of said town, upon receiving from the directors of the said railroad company bonds in conformity with said proposition, to issue and deliver to the directors of said company the bonds of such town in conformity with said proposition.

And that said chairman and clerk did receive then and there from the said directors bonds in conformity with said proposition; and that said chairman and clerk did thereafter, at Mineral Point, in said town of Mineral Point, to wit, on the 10th day of April, A. D. 1862, issue and deliver to the said directors of said company the bonds of said town, in conformity with said proposition, numbered from one to one hundred and twenty, respectively, in sums of five hundred dollars each, payable to the treasurer of the said railroad company and his successors in office, or to the bearer thereof, at the bank of the Manhattan Company, in the city of New York, on the first day of October, A. D. 1870, and also interest thereon at the rate of eight per cent. per annum, semi-annually, on the first day of each and each October ensuing the date of said bonds, until the said principal sum should be paid, on presentation of the coupons or interest warrants annexed to said bonds respectively, at the said bank of the Manhattan Company; whereby the said town of Mineral Point, the said defendant, became bound to pay the said several sums and interest mentioned in said bonds respectively, as in said bonds and coupons mentioned and as hereinbefore set forth.

And for that whereas the said plaintiff is now the holder and owner of eighty-eight coupons, each for the payment of the sum of twenty dollars, and each of said coupons is of the tenor following, except that each coupon is numbered with the number of the bond respectively to which the same was attached, and numbered 1 to 24, inclusive, 31 to 54, inclusive, and 81 to 120, inclusive, that is to say:

7 $20.

The town of Mineral Point will pay to the holder hereof twenty dollars on the first day of October, 1857, at the bank of the Manhattan Company, in the city of New York, on presentation hereof, being the interest due that day on the bond of said company No. 1, issued to the treasurer of the Mineral Point Railroad Company.

JNO. BRACKEN, *Chairman of Board Sup'rs.*

W. H. CURRY, *Town Clerk.*

Being eighty-eight coupons in all, for the aggregate amount of seventeen hundred and sixty dollars; and that all of said coupons are the property of the said plaintiff, and are all due and unpaid; and that the interest on the said bonds specified in said coupons has never been paid by said defendant nor by any other person or persons, but now remains unpaid and owing to the said plaintiff from the said defendant according to the tenor and effect of said coupons respectively. Yet though the sum of seventeen hundred and sixty dollars is now due and has long since been due on said coupons from said defendant to said plaintiff, yet the said defendant, although often requested, hath never paid the said sum, but refuses and neglects so to do; whereby an action hath accrued to the said plaintiff to demand and have of the said defendant the said sum of seventeen hundred and sixty dollars,

which said defendant now owes to and unjustly detains from the said plaintiff.

And whereas also the said defendant afterwards, to wit, on the
8 first day of October, A. D. 1861, at the city of New York, to wit, at the district of Wisconsin aforesaid, was indebted to the said plaintiff in the further sum of seventeen hundred and sixty dollars, for so much money before that time and then due and payable from the said defendant to the said plaintiff, upon coupons or interest warrants, each for the sum of twenty dollars, which coupons or interest warrants are of the following tenor, that is to say:

$20.

The town of Mineral Point will pay to the holder hereof twenty dollars on the first day of October, 1857, at the bank of the Manhattan Company, in the city of New York, on presentation hereof, being the interest due that day on the bond of said company No. 1, issued to the treasurer of the Mineral Point Railroad Company.

JNO. BRACKEN, *Chairman of Board Sup'rs.*

W. H. CURRY, *Town Clerk.*

Except that the number of said coupons vary, being numbered with the bonds to which they were attached, and are all payable on the 1st October, 1857, and to be paid to the said plaintiff according to the tenor and effect of said coupons. Yet although the said sum of seventeen hundred and sixty dollars hath been long since due and payable, and although often requested, the said defendant hath never paid the same or any part thereof, but refuses so to do whereby an action hath accrued to the plaintiff to demand and have of the said defendant the said sum of seventeen hundred and
9 sixty dollars, which the said defendant owes to and unjustly detains from said plaintiff, to the damage of the said plaintiff of four thousand dollars. And therefore he brings his suit, &c.

CARPENTER & GRIDLEY, *Plaintiff's Attorneys.*

And afterwards, on the 3d day of March, 1862, came the defendant, by its attorneys, Messrs. Emmons & Van Dyke, and filed its plea and notice in the words and figures following, to wit:

District court of the United States for the district of Wisconsin.

JAMES LEE
*vs.*
THE TOWN OF MINERAL POINT.

And the said defendant, by Emmons & Van Dyke, its attorneys, comes and defends the wrong and injury, when, &c., and says that it does not owe the said several sums of money in said declaration mentioned, and above demanded, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against it. And of this it puts itself upon the country.

EMMONS & VAN DYKE, *Defendant's Att'ys.*

10 Notice is hereby given that the said defendant, at the trial of the above-entitled action, will insist upon and give in evidence under the general issue above pleaded:

First. That the bonds and coupons declared on in the declaration in this suit, and upon which this suit is brought, were not issued in accordance with the authority given by the act of the legislature approved March 23,

1853, entitled "An act to authorize the counties and towns through which the Mineral Point railroad passes to aid in its construction," nor in accordance with any act of the legislature whatever.

Second. That neither twenty or thirty days' previous notice of said election, nor any notice whatever thereof, was given as required by said act of March 23d, 1853.

Third. That a majority of the legal voters of the town of Mineral Point never voted at any election in favor of accepting any proposition of said Mineral Point Railroad Company, nor in favor of authorizing the issue of said bonds, as required by said act of March 23d, 1853.

Fourth. That the said town of Mineral Point has never received or had from said Mineral Point Railroad Company neither sixty thousand of its bonds or stock, nor any or either of them, nor any consideration whatever for said bonds and coupons, as required by said act of March 23d, 1853.

Fifth. That the bonds and coupons declared on in the declaration in this suit, and upon which this suit is brought, were not made, signed, or issued, as the same purport to be, on the 1st day of October, A. D. 1855.

11 Sixth. That said bonds and coupons were in fact made and signed in the spring or summer of A. D. 1856.

Seventh. That at the time of so making and signing said bonds and coupons, William H. Curry, who pretended to or did sign them as clerk of the town of Mineral Point, was not the clerk of said town, and had no authority whatever to sign them as such clerk.

Eighth. That at the time when it is alleged by the said plaintiff that said bonds were executed and delivered by the said town of Mineral Point, there was no law or act of the legislature whatsoever in existence authorizing the execution and delivery thereof, and the same are hence void for lack of corporate power in the said town to make the same. That the said pretended act of the legislature of March 23d, 1853, was not, when said bonds were pretended to have been made and issued, in force, and had no legal existence or effect; that the same had not at said time been published in accordance with the provisions of section twenty-one of article seven of the constitution of the State of Wisconsin, and of the laws of the said State made in pursuance thereof, and that the same has never been so published.

EMMONS & VAN DYKE, *Defen'l's Att'ys.*

And afterwards, on the 10th day of March, 1862, came the defendant, by its attorneys, and filed its affidavit of merits in the words and figures following, to wit:

12 District court of the United States for the district of Wisconsin.

JAMES LEE
*vs.*
THE TOWN OF MINERAL POINT.

STATE OF WISCONSIN, *Iowa County, ss:*

William B. Parkinson, being duly sworn, deposes and says that he is the chairman of the board of supervisors of the town of Mineral Point, defendant in the above-entitled action, and that the defendant has a good and substantial defence upon the merits to the whole of the plaintiff's demand in said action. And further saith not.

W. B. PARKINSON.

Subscribed and sworn to this 6th day of March, A. D. 1862, before me.
[SEAL.] GEORGE HENRY, *Notary Public, Iowa Co., Wis.*

Transferred to circuit court U. S., Law Docket A, page 75.
October 1, 1862, transferred and continued from the district court U. S., 171, Jan. term, 1862, App. Docket I, page 171.

13 And afterwards, on the 10th day of November, 1862, substitution of Mat. H. Carpenter, as plaintiff's attorney, filed in the words and figures following, to wit:

Circuit court of the United States, 8th judicial circuit, district of Wisconsin.

JAMES LEE
*vs.*
THE TOWN OF MINERAL POINT.

You will please enter substitution of Matt. H. Carpenter as the attorney of the plaintiff in the above-entitled suit.
Dated October 6th, A. D. 1862.

MATT. H. CARPENTER.
N. C. GRIDLEY.

To JOHN M. MILLER, Esq., *Clerk.*

February 4, 1863. This day came the defendant's counsel, and on their motion it is ordered by the court that this cause be, and hereby is, continued.
April 18, 1864. This day came the parties, by their counsel, and it is ordered by the court that this cause be, and the same is, continued.
And afterwards, on the 24th day of August, 1864, came the plaintiff, by his counsel, and filed motion and affidavit for leave to amend his declaration in the words and figures following, to wit:

Circuit court of the United States for the ninth circuit and district of Wisconsin.

14 JAMES LEE
*vs.*
THE TOWN OF MINERAL POINT.

DISTRICT OF WISCONSIN, *ss:*

Matt. H. Carpenter, being first duly sworn, on oath, says that there are errors in the first count of the plaintiff's declaration in this cause which ought to be corrected by the following amendments, which are necessary to secure a correct statement of the cause of action.

1. Strike out "Parley Eaton" and insert instead the word "its."
2. Strike out "William T. Henry" and insert instead thereof the word "the."
3. Amend the statement as to date of delivery of bonds by defendant by striking out the words "on the 1st day of October, A. D. 1855," and insert instead thereof the words "to wit, on the 10th day of April, A. D. 1862."

MATT. H. CARPENTER.

Subscribed and sworn to before me this 24th day of August, 1864.
A. SCOTT SLOAN, *Clerk,*
By JAMES McFARLIN, *Deputy.*

Circuit court of the United States for the ninth circuit and district of Wisconsin.

JAMES LEE
*vs.*
THE TOWN OF MINERAL POINT.

15 Here in court comes the plaintiff, by Matt. H. Carpenter, his attorney, and moves upon the affidavit of Matt. H. Carpenter, filed for an order for leave to amend the first count of his declaration in this action, as follows:

1st. Strike out "Parley Eaton" and insert instead thereof the word "its."

2d. Strike out "William T. Henry" and insert instead thereof the word "the."

3d. Amend the statement as to date of delivery of bonds by defendant by striking out the words "on the 1st day of October, A. D. 1855," and insert instead thereof the words "to wit, on the 10th day of April, A. D. 1862."

And that said amendments be made without prejudice to a trial of this action at the September term of this court, A. D. 1864.

Dated August 24, 1864.

MATT. H. CARPENTER, *Att'y for Plaintiff.*

Circuit court of the United States for the ninth circuit and district of Wisconsin.

JAMES LEE
*vs.*
THE TOWN OF MINERAL POINT.

To Emmons & Van Dyke, esqs., attorneys for defendant:

Take notice that the motion foregoing will be made in this cause
16 on the opening of said court, at the court-house, in the city of Milwaukee, in said district, on the 2d Monday of September, A. D. 1864, or as soon thereafter as counsel can be heard. Founded on the foregoing affidavit hereto attached.

Dated August 24, 1864.

MATT. H. CARPENTER, *Att'y for Plaintiff.*

Said motion papers were endorsed as follows, to wit:

We admit due service on us of a copy of the within affidavit, motion, and notice this 24th day of August, 1864.

EMMONS & VAN DYKE.

And afterwards, to wit, on the 13th day of September, A. D. 1864, came the parties, by their counsel, and the motion of the plaintiff for leave to amend his declaration heretofore filed, came on to be heard, and was argued by counsel, and on consideration thereof it is ordered by the court that the said plaintiff have leave to amend his declaration as set forth in said notice of motion; and the said declaration was amended accordingly.

And afterwards, on the 24th day of September, 1864, came the parties, by their counsel, and the issue herein came on to be tried. Whereupon a jury was called to try the same, who came, to wit, Richard B. Winsor, J. Fowle, David Moul, George Robinson, Hiram R. Bond, C. G. Heath,
17 Robert Menzies, Jared Thompson, George J. Fowler, A. W. Manning, Francis Wright, and A. Randall, twelve free, honest, and lawful men of the district, who were severally sworn and empanneled. And the trial not being concluded the same was adjourned until Monday morning.

SEPTEMBER 26, 1864.

This day came the parties, by their counsel, and the trial of the issue herein was resumed. And it is ordered by the court that the plaintiff have leave to amend his declaration by increasing the ad damnum to the sum of four thousand dollars; and the said declaration was amended accordingly. And the jurors of the jury aforesaid being charged by the court, upon their oaths aforesaid, respectively, do say that they find the issue herein in favor of the plaintiff, and that the defendant does owe and is indebted to the plaintiff two thousand six hundred and twenty-one dollars and four cents, in manner and form as the plaintiff hath herein declared. Whereupon it is considered and adjudged by this court now here that the said plaintiff do have and recover of the said defendant, the town of Mineral Point, two thousand six hundred and twenty one dollars and four cents, debt so found by the jury, together with one hundred and eight dollars and twenty-four cents, his costs about his said suit in this behalf by him expended, and that he have execution therefor.

Judgment roll signed September 26, 1864.

A. SCOTT SLOAN, *Clerk.*

| | |
|---|---|
| Damages | $2, 621 04 |
| Costs | 108 24 |

18 And afterwards, on the 11th day of October, A. D. 1864, came the defendant, by its attorneys, and filed its bill of exceptions, duly allowed and signed, in the words and figures following, to wit:

19 The circuit court of the United States for the ninth circuit and district of Wisconsin.

JAMES LEE
*vs.*
THE TOWN OF MINERAL POINT.

Afterwards, to wit, on the day and at the place within contained, before the Honorable Samuel F. Miller, presiding judge, and the Honorable Andrew G. Miller, district judge, being the judges of the said circuit court, came as well the within-named James Lee, plaintiff, as the said town of Mineral Point, by their respective counsel, and a jury having been called and duly tried and sworn to try the issue joined, the said plaintiff, to maintain the issue on his part, offered to read in evidence chapter one hundred and seventeen of the Private and Local Laws of the State of Wisconsin, for the year 1853, entitled "An act to authorize the counties and towns through which the Mineral Point railroad passed to aid in its construction," and being the same act set out in the plaintiff's declaration, which act appeared to have been printed in the volume of private and local acts of the legislature of said State for that year, on the second day of October, 1853, and which was the only publication of said act.

To the reading of which act the defendant objected, because the printing thereof in said volume of private laws was not a publication thereof
20 within the meaning of section twenty-one of article eight of the constitution of Wisconsin, and the laws enacted thereunder; which said objection was by the court overruled, and the plaintiff was permitted to read said act in evidence; to which said ruling and decision the defendant did then and there, by its counsel, duly except.

Whereupon the plaintiff, further to maintain the issue on his part, offered in evidence an instrument or bond, a copy whereof is hereto annexed and made a part of this bill of exceptions; to the reading of which instrument in evidence the defendant, by its counsel, did then object for the reasons—

1st. That it did not appear that the sev. steps to be taken, and acts required to be done, on the part of the said town of Mineral Point and the Mineral Point Railroad Company, antecedent to the issue and delivery of bonds, and as required by the terms and provisions of said act of the legislature, had been taken or done, or the act in anywise observed.

2nd. That it was incumbent upon the plaintiff to prove the execution of the said instrument or bond.

3d. That there was no law in force at the time of the making of the said instrument, or when it purports to have been made, authorizing the defendant to execute and deliver such bond.

Which said reasons were ruled by the court to be insufficient; and the said objection was overruled and the said bond permitted to be read
21 in evidence; to which ruling and decision the defendant, by its counsel, did then and there duly except.

And thereupon the plaintiff, further to maintain the issue on his part, offered in evidence eighty-eight instruments purporting to be coupons or interest warrants, of the tenor and description of those mentioned in the declaration, and to which the defendant objected for the reasons—

1st. Because the bonds which the said coupons or interest warrants purported to have accompanied, and been annexed to, were not produced.

2d. Because the execution of said coupons was not proved.

3d. Because there was no legal power in the defendant to issue and put in circulation such instruments and evidences of debt.

But the court did thereupon rule and declare that the said reasons were insufficient, and did overrule the said objection, and to which ruling and decision the defendant then and there duly excepted; and which was all the evidence given the case.

The plaintiff thereupon moved the court for leave to amend his declaration by increasing the amount of damages claimed to the sum of three thou sand dollars, and to which the defendant, by his counsel, objected; but the court allowed such amendment; and to which ruling and decision the defendant, by its counsel, did then and there duly except.

Whereupon the defendant, by its counsel, asked and prayed the
22 court to instruct the jury that the plaintiff was not entitled to recover interest upon the said coupons or interest warrants; which said prayer for instructions was refused. And the court thereupon instructed and charged the jury that the said plaintiff was entitled to recover interest upon said coupons or interest warrants from the date when they severally matured; to which said refusal the defendant, by its counsel, did then and there duly except.

And because none of the said exceptions so offered and made to the rulings and decisions of the said circuit court do appear upon the record of said trial, therefore on the trial of said defendant, by its counsel, the said Andrew G. Miller, one of the judges of said court, hath to this bill of exceptions set his seal, according to the statute in that case made, this twenty-sixth day of September, A. D. 1864.

[SEAL.] A. G. MILLER.

UNITED STATES OF AMERICA, *State of Wisconsin:*

No. 28. $500.

Bond of the town of Mineral Point, issued in pursuance of a special vote of the citizens, as authorized by an act of the legislature of Wisconsin.

Know all men by these presents that the town of Mineral Point, in
23 the county of Iowa and State of Wisconsin, for and in consideration of five shares, of one hundred dollars each, of the capital stock of the

Mineral Point Railroad Company, is justly indebted, and promises to pay to Francis Vivain, treasurer of said Mineral Point Railroad Company, or his successors in office, or bearer, the sum of four hundred dollars on the first day of October, A. D. 1870, at the bank of the Manhatton Company, in the city of New York, with interest at the rate of eight per cent. per annum, payable semi-annually, on the first day of April and October of each year, at the said bank, on surrender of the respective coupons annexed. For the payment of principal and interest the faith and credit of the said town of Mineral Point are inviolably and irrevocably pledged.

This obligation is one of one hundred and twenty bonds, of five hundred dollars each, respectively numbered from 1 to 120, inclusive, for which the town of Mineral Point agrees to provide by a special tax of six thousand dollars per annum, voted for by the people of said town, in pursuance of an act of the legislature of Wisconsin, approved March 23d, 1853, entitled "An act to authorize the counties and towns through which the Mineral Point railroad passes to aid in its construction."

And it is further agreed that all such sums to which the said town shall be entitled for dividends on any stock in said railroad company, shall
24 be applied to the payment or purchase of any of said bonds which can be bought at or below par.

This obligation, and all rights and benefits arising therefrom, may be transferred by general or special indorsement, or by delivery, as if the same were a note of hand payable to bearer.

In witness whereof, the said town of Mineral Point has caused these presents to be signed by the chairman of the board of supervisors and the clerk of said town, this first day of October, A. D. 1855.

[SEAL.] JOHN BRACKEN,
*Chairman of the Board of Supervisors.*

W. H. CURRY, *Town Clerk.*

STATE OF WISCONSIN, *Iowa County:*

I hereby certify that John Bracken was chairman of the board of supervisors and W. H. Curry was town clerk of the town of Mineral Point at the date of the foregoing bond, by them subscribed, and that their signatures thereto are genuine.

In witness whereof, I have hereunto set my hand and affixed my official seal the tenth day of April, A. D. 1856.

[SEAL.] ARTHUR BRITTAN,
*Clerk of the Bord of Supervisors.*

Which bond was endorsed in words and figures as follows, to wit: For value received the Mineral Point Railroad Company guarantee the
25 payment of the principal and interest of the within bond.

In testimony whereof, the said company have caused its seal to be hereto affixed and this guaranty to be signed by the president and secretary, this 8th day of April, A. D. 1856.

[SEAL.] PARLEY EATON, *President.*

WILLIAM T. HENRY, *Secretary.*

26 And afterwards, on the twenty-fifth day of January, A. D. 1865 came the defendant, by its attorneys, and filed its bond in error in the penal sum of two hundred and fifty dollars, duly approved by the district judge, as follows, wit:

Know all men by these presents that we, James Spensley and John P. Tramel, of Mineral Point, in the county of Iowa, in the State of Wisconsin,

are held and firmly bound unto James Lee, of the city of New York, in the sum of two hundred and fifty dollars, lawful money, to be paid to the said James Lee, his heirs, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seal and dated this fourteenth day of January, 1865.

The condition of the above obligation is such that whereas, in the circuit court of the United States for the district of Wisconsin, in a suit depending in said court between the said James Lee and the town of Mineral Point, judgment was rendered against said town at the September term, 1864, and the said town having obtained a writ of error to remove the record of said suit to the Supreme Court of the United States for review: Now, if
27 said town of Mineral Point shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then this obligation to be void; else, to remain in force.

JAMES SPENSLEY. [SEAL.]
JOHN P. TRAMEL. [SEAL.]

Sealed and delivered in presence of—
GEORGE HENRY.
J. M. SMITH.

January 25th, 1865. This bond approved.

A. G. MILLER, *District Judge.*

28 Whereupon a writ of error and citation were duly issued, and copy of writ of error lodged for defendant in error.

And afterwards, on the twenty-fifth day of January, A. D. 1865, citation returned, endorsed thereon as follows, to wit: "I admit due service of this citation.

"MATT. H. CARPENTER, *Attorney for Def't in Error.*"

29 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the circuit court of the United States of America for the district of Wisconsin, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said circuit court of the United States of America for the district of Wisconsin, before you, between James Lee, plaintiff, and the town of Mineral Point, defendant, a manifest error hath happened, to the great damage of the said town of Mineral Point, as by the complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, that of right and according to law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, chief justice of the said Supreme Court of the United States, this twenty-fifth day of January, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

A. SCOTT SLOAN, *Clerk.*

30 UNITED STATES OF AMERICA, *ss:*

To James Lee, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Wisconsin, wherein the town of Mineral Point is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, chief justice of the Supreme Court of the United States, this twenty-fifth day of January, in the year of our Lord one thousand eight hundred and sixty-five.

A. G. MILLER, *District Judge, &c.*

I admit due service of this citation.

MATT. H. CARPENTER, *Attorney for Def't in Error.*

Filed February 2, 1865.

# Supreme Court of the United States.

No. 164. DECEMBER TERM, 1866.

THE TOWN OF MINERAL POINT,

*Plaintiff in Error.*

*vs.*

JAMES LEE.

## BRIEF FOR DEFENDANT IN ERROR.

MATT H. CARPENTER,

*Counsel.*

Starr & Son, Printers, Milwaukee.

# SUPREME COURT

OF THE

# UNITED STATES.

No. 164, DECEMBER T. 1866.

THE TOWN OF MINERAL POINT,
*Plaintiff in Error.*
vs.
JAMES LEE.

Error to the Circuit Court District of Wisconsin.

This was an action of debt, on coupons of certain bonds issued by the town of Mineral Point, in the State of Wisconsin, in aid of the Mineral Point Railroad Company; under and in pursuance of chapter 117, private and local laws of the State of Wisconsin, passed and enacted in 1853.

This was the same act under which Iowa County issued certain bonds, which act was passed upon by this court at the last term.

*Havemyer v. Board Supervisors*, 3 *Wallace* 294.

The great question involved in that case, in regard to the validity of bonds issued before publication of the act, is not involved in this case; because the act had been published before the election was held under which these bonds were given. The act was published in October 1853; and the election in the town of Mineral Point was held and the bonds issued in 1855.

*See Bond———Record* 12, 13.

On the trial the plaintiff read the act of the legislature in evidence; also one of the bonds issued by the town, for its recitals of fact; and the coupons declared on in the declaration.

To this evidence the defendant interposed the stereotyped objections which have been taken and overruled in every municipal bond case heretofore decided in this court. But after the pointed language of this court, at the last term, in Rodgers v. Burlington—3 Wallace 654, it would be almost as discourteous to the court to argue with as to contend against the oft repeated decisions and opinions of this court. I shall therefore merely specify the exceptions and cite the decisions overruling them.

## I

The defendant objected to the reading of the act because the printing thereof with the Private Laws was not a constitutional publication; which is necessary in our state to the validity of a *general* law. *Record page* 11.

1. This objection is directly overruled by the Supreme Court of Wisconsin; which holds such publication of even a *general* law to be sufficient.

In re Boyle, 9 Wis. 264.

2. This court has decided that the act in question *is not to be considered a general* law; therefore *no publication whatever is necessary to its validity. Havemyer v Board Supervisors*, 3 *Wallace* 294.

## II

To the reading of the bond, the defendant objected.

(1) That it did not appear that the several steps to be taken in the issue of the bond, the election &c., had been taken according to the act. Record page 12.

This objection is disposed of by the following cases:

*Rodgers vs. Burlington*, 3, Wallace 654.

*Murray v. Lardner*, 2, Wallace 110.

*Gelpcke v. Dubuque*, 1, Wallace 175.

*Bronson v. Railroad*, 2, Wallace 283.
*Mercer Co. v. Hackett*, 1, Wallace 83.
*Goodmen v. Simons*, 20, How 452.
*Mercer v. Muscatine*, 1 Wallace 384.
*Van Hostnip v. Madison*, 1 Wallace 291.

(2.) That it was incumbent upon the plaintiff to prove the execution of the bond. *Record page* 12.

By the *R Statutes of Wisconsin*, 1858, *chap.* 137, *sec.* 92, it is made unnecessary to prove the execution of any instrument declared on, or offered in evidence, which purports to be executed by a party; unless the execution thereof has been denied by affidavit. This had not been done.

The State laws as to evidence are rules of decision in the federal courts.

*Sims v. Hundley*, 6 *How* 1.
*McNeil v. Holbrook*, 12 *Pet.* 84.

(3.) That there was no law in force authorizing the issue of the bonds. *Record page* 12.

This is but a repetition of the first objection, made to the law itself, and is disposed of by the authorities cited above.

III.

The defendant objected to the reading of the coupons.

(1.) Because the bonds were not produced.

(2.) Because the execution of the coupons was not proved.

(3.) Because the town had no power to issue the bonds. *Record page* 12.

The first ground of this objection is disposed of by the following case; and the other two are mere repetitions of previous unfounded objections.

*Knox County v. Aspinwall* 21 *How.* 539.

IV.

The amendment of the declaration on the trial as to the amount of damages claimed was proper. The suit was commenced in November

1861, the defendant had succeeded in delaying the trial till September 1864; and the accumulation of interest had made the claim exceed the two thousand dollars originally demanded. The amendment did not surprise the defendant, or change the issue; he did not ask terms, or leave to plead over; and the amendment was properly allowed..

*Bogart v. McDonald*, 2 *Caines Cases* 219, *and numerous notes.*

Such amendment will be granted after verdict on terms.

*Dox v. Day*, 3 *Wend.* 356.

*Tomlinson v. Blacksmith*, 7 *T. R.* 132.

2. Amendments are in the discretion of the court and cannot be reviewed on writ of error.

V.

The defendant requested the court to charge the jury that the plaintiff was not entitled to recover interest on the coupons.

The law is dealed the other way, by repeated decisions of this court.

Mercer Co. v. Hackett, 1 Wallace 83.

Gelpcke v. Dubuque, 1, Wallace 175.

Meyer v. Muscatine, 1 Wallace 384.

To relieve this defendant this court must overrule all its former adjudications upon this subject; or pay these coupons out of some fund in court. The latter course would be satisfactory to both parties. *especially the plaintiff.*

MATT. H. CARPENTER,

*Counsel for Defendant in Error.*